LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS
200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
http://www.in.gov/legislative

FISCAL IMPACT STATEMENT

LS 7595
BILL NUMBER: SB 572

NOTE PREPARED: Jan 14, 2009
BILL AMENDED:

SUBJECT: Mortgage Loan Creditors and Originators.

FIRST AUTHOR: Sen. Paul
FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: The bill makes various changes to the laws concerning licensing residential mortgage loan creditors and originators to comply with requirements of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008.

It repeals provisions being superseded by this bill, and it repeals provisions under the Uniform Consumer Credit Code concerning the following: (1) A definition index. (2) Revocations of certain licenses.

Effective Date: July 1, 2009.

Explanation of State Expenditures: *Summary-* The bill may have minimal fiscal impact on the Department of Financial Institutions (DFI) for the licensing of mortgage loan originators and licensed creditors of first lien mortgages and subordinate lien mortgages. Any cost increases would be associated with enforcement of the statute, including hiring professionals, and rulemaking by the DFI. The bill includes new civil penalties and applies existing civil penalties to additional licensees which could increase revenue to the Financial Institutions Fund, a dedicated fund that pays the expenses of the DFI or the state General Fund. Also, for a violation of the first lien mortgage lending act, the DFI may order restitution in addition to or in place of any other penalties.

The bill more clearly defines who must apply as a mortgage loan originator or a licensed creditor and mandates qualification and licensing requirements for mortgage loan originators and creditors. It specifies the Nationwide Mortgage Licensing System and Registry as the automated central licensing system and repository to processes applications and renewals, channel information, and perform national criminal history background checks (along with the State Police). [The Secure and Fair Enforcement for Mortgage Licensing Act of 2008 requires states to meet certain requirements in order to continue regulating mortgage lending at the state level.]

Explanation of State Revenues: *Civil Penalties:* The bill adds a civil penalty of up to $500 for each day that a creditor willfully permits a prohibited person to serve the creditor. For violations, the Director may remove an officer, director, or employee of a creditor, prohibit any participation by the same, or both, and impose a civil penalty of up to $15,000 per practice, violation, or condition. The bill adds 15 acts that violate the Uniform Consumer Credit Code (UCC), including among other things: directly or indirectly employing any scheme, device, or artifice to defraud or mislead borrowers or lenders; engaging in any unfair or deceptive practice; or obtaining property by fraud or misrepresentation.

Civil penalties assessed by the Director are to be placed in the Financial Institutions Fund; Civil penalties imposed by the UCC generally go to the state General Fund or the Financial Institutions Fund.

Criminal Acts: Licensing requirements for creditors, mortgage loan originators in subordinate lien mortgage transactions, assignment of subordinate lien mortgage transactions, or undertaking collection of payments are subject to a Class A misdemeanor.

If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class A misdemeanor is $5,000. Criminal fines are deposited in the Common School Fund.

If the case is filed in a circuit, superior, or county court, 70% of the $120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund. In addition, some or all of the document storage fee ($2), automated record keeping fee ($7), judicial salaries fee ($18), public defense administration fee ($3), court administration fee ($5), judicial insurance adjustment fee ($1), and the DNA sample processing fee ($1) are deposited into the state General Fund.

Explanation of Local Expenditures: A Class A misdemeanor is punishable by up to one year in jail. The average daily cost to incarcerate a prisoner in a county jail is approximately $44.

Explanation of Local Revenues: If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: The county general fund would receive 27% of the $120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. In addition, several additional fees may be collected at the discretion of the judge and depending upon the particular type of criminal case.

State Agencies Affected:

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources:

Fiscal Analyst: Chris Baker, 317-232-9851.